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(908) 298-4000

FACSIMILE TRANSMITTAL SHEET

To
Zachariah Lucas
USPTO/Mail Stop: Petition

FAX NUMBER:
571-273-8300

FROM:
Michael D. Davis

PHONE NUMBER:
908-298-2194

TOTAL NO. OF PAGES INCLUDING COVER
13

DATE
01/18/2006

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NOTES/COMMENTS:


PLEASE HAND DELIVER

In re Application of: *Wild, Martha A. et al.*
For Patent For: Recombinant Infectious Laryngotracheitis Virus And Uses Thereof
Group Art Unit: 1648
Attorney Docket No.: SY01106KQBUS Serial No.: 09/994,064
Filed: 11/06/2001

Dear Examiner Lucas,

Transmitted herewith are:

- Fax Cover Sheet – 1 pg.
- Certificate of Transmission – 1 pg.
- Fee Transmittal - 1 pg. in duplicate
- Request for Reconsideration – 9 pgs.


Michael D. Davis
Registered Representative
Registration No. 39,161

PHONE: (908)298-3955

FAX: (908)298-5388

Docket Number: SY01106KQBUS
Application No: 09/994,064
Filing Date: 11/08/2001
First Inventor: WILD, Martha A.

PTO/SB/97 (09-04)
Approved for use through 07/31/2006. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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Certificate of Transmission under 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office

on 01/18/2006

Date



Signature

MICHAEL D. DAVIS

Typed or printed name of person signing Certificate

39161

Registration Number, if applicable

908-298-2194

Telephone Number

Note: Each paper must have its own certificate of transmission, or this certificate must identify each submitted paper.

Fax Cover Sheet - 1 pg
Certificate of Transmission - 1 pg
Fee Transmittal - 1 pg in duplicate
Request for Reconsideration - 9 pgs

This collection of information is required by 37 CFR 1.8. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.8 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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PTO/SB/17 (12-04)

Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are entitled to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/09/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)
\$200.00

Complete if Known

Application Number 09/994,064
Filing Date 11/06/2001
First Named Inventor WILD, Martha A.
Examiner Name Z. Lucas
Art Unit 1648
Attorney Docket No. SY01106KQBUS

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify):

☒ Deposit Account Deposit Account Number: 19-0365 Deposit Account Name: Schering-Plough Corporation

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee
☒ Charge any additional fee(s) or underpayments of fee(s) ☒ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 or, for Reissues, each claim over 20 and more than in the original patent	50	25
Each independent claim over 3 or, for Reissues, each independent claim more than in the original patent	200	100
Multiple dependent claims	360	180

Total Claims Extra Claims Fee (\$) Fee Paid (\$) Multiple Dependent Claims Fee (\$) Fee Paid (\$)
- 20 or HP = $\frac{\text{Total Claims} - 20}{\text{HP}}$ x Fee = Fee Paid
HP = highest number of total claims paid for, if greater than 20
Indep. Claims Extra Claims Fee (\$) Fee Paid (\$)
- 3 or HP = $\frac{\text{Indep. Claims} - 3}{\text{HP}}$ x Fee = Fee Paid
HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper, the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets Extra Sheets Number of each additional 50 or fraction thereof Fee (\$) Fee Paid (\$)
- 100 = $\frac{\text{Total Sheets} - 100}{50}$ (round up to a whole number) x Fee = Fee Paid

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other: Request for Reconsideration

Fees Paid (\$)
\$200.00

SUBMITTED BY

Signature *Michael D. Davis* Registration No. (Attorney/Agent) 39161 Telephone 908-298-2194
Name (Print/Type) MICHAEL D. DAVIS Date 01/18/2006

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JAN 18 2006

PATENT
SY01106 KQB US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

MARTHA A. WILD ET AL:

For:
RECOMBINANT INFECTIOUS
LARYNGOTRACHEITIS VIRUS
AND USES THEREOFSerial No.: 09/994,064
Filed: November 6, 2001Patent No.: 6,984,728
Issue Date: January 10, 2006

Examiner: Z. LUCAS

Group Art Unit: 1648

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450
Mail Stop: Petition**REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. § 1.705 (b)**
OF THE PATENT TERM ADJUSTMENT UNDER 35 U.S.C. § 154(b)
INDICATED IN THE NOTICE OF ALLOWANCE

Sir:

The Applicants request reconsideration of the patent term adjustment of three hundred and sixty-one (361) days indicated on both the Issue Notification of December 21, 2005 for the above-identified Patent, and the corresponding cover sheet of that patent. For the reasons provided below, the Applicants further request that the above-identified patent application be afforded a patent term adjustment of five (5) more days, making a total of **three hundred and sixty-six (366) additional days**. For the USPTO's convenience, the Applicants enclose a hard copy of the Analysis Summary Report compiled by a commercial software program that contains the Applicant's determination of the patent term adjustment.

01/23/2006 CNGUYEN3 00000003 190365 09994064

01 FC:1455 200.00 DA

Serial No.: 09/993,777

In accordance with 37 C.F.R. §1.702, the above-identified patent application was filed after May 29, 2000 and therefore, is eligible for patent term adjustment under 35 U.S.C. §154(b). The patent issued on January 10, 2006.

(1) Please charge the fee of \$200.00 set forth in 37 C.F.R. § 1.18(e) to Deposit Account No. 19-0365. A Fee Transmittal Form is enclosed.

(2) The Applicants provide a statement of facts regarding the correct patent term adjustment under 37 CFR § 1.705 (b) as follows:

(i) The correct patent term adjustment should be **three hundred and sixty-six (366)** additional days. The Applicants enclose a hard copy of the Analysis Summary Report compiled by a commercial software program that contains the Applicants' determination of the patent term adjustment. In short, the net adjustment credits were 494 days and the net adjustment debits were 128 days, making the net adjustment 366 days. The Applicants believe the discrepancy between their calculation and that of the USPTO, is that the USPTO incorrectly included five (5) overlap days.

(ii) The Applicants do not contest the finding of the USPTO that:

- There are 494 net adjustment credit dates;
- There are 8 debit days due to receipt by the USPTO of the Applicants' response on January 30, 2003 to a non-final Office Action dated October 22, 2002, per 37 CFR §1.704(b);
- There are 120 debit days as a result of the filing of an Amendment under 37 CFR § 1.112, per 37 CFR § 1.704 (c) (10); and
- There are 5 debit days as a result of the Fee Transmittal being received by the USPTO on May 3, 2004, although due and mailed on April 28, 2004, per 37 CFR § 1.704(b). However, the Applicants respectfully point out that the term of the last two items run concurrently.

Serial No.: 09/993,777

and therefore, there are **five(5) overlap days** that were incorrectly deducted from the 494 net adjustment credit days.

Therefore, the total number of debit days are:


$$8 + 120 = 128;$$

and the patent term adjustment therefore, should be **three hundred and sixty-six (366)** additional days based on subtracting the one hundred and twenty-eight (128) debit days from the sum of the four hundred and ninety-four (494) credit days. [37 C.F.R. §1.703(f)].

(iii) The patent is currently subject to a terminal disclaimer. However, the Applicants filed a Petition on February 19, 2004 to expunge the file history of this terminal disclaimer based on the Examiner's determination that the rejection for non-statutory obviousness double patenting had been made inappropriately. The Examiner stated in an Interview Summary dated September 23, 2003, that, "the Applicant may take appropriate action to expunge the terminal disclaimer from the file as it is not necessary in view of the withdrawal of the rejection." As stated above, the Applicants have taken the necessary action to expunge the terminal disclaimer and await the final ruling of the USPTO.

No additional fees are believed to arise due to this filing, however, if any additional fees are required, the Commissioner is hereby authorized to charge any required fees to Deposit Account No. 19-0365.

Schering-Plough Corporation
2000 Galloping Hill Road
Kenilworth, New Jersey 07033-0530


Michael D. Davis
Reg. No. 39,161
Attorney for Applicants
(908) 298-2914

January 18, 2005

RULE APPLICATION SUMMARY

	Event	Rule Invoked	Related Event	Excluded Days	Debit Days
A	11/06/2001 Filing Date under 35 USC 111(a) (US National Application)	<p><u>14-Month PTO First Action</u></p> <p>PTO must mail a notification under 35 USC 132 or a notice of allowance under 35 USC 151 not later than 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of <u>35 USC 371</u> in an international application. Period of adjustment (credits) begins on the day after the date that is 14 months after the date on which the application was filed under 35 USC 111(a) or fulfilled the requirements of <u>35 USC 371</u> and ending on the date of mailing of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. <u>35 USC 154(b)(1)(A)(i)</u>; <u>37 CFR 1.702(a)(1)</u>, <u>1.703(a)(1)</u>.</p>	<p><i>First PTO Action:</i></p> <p>06/28/2002 Restriction / Election-of- Species</p>	0	0
B	11/06/2001 Filing Date under 35 USC 111(a) (US National Application)	<p><u>3-Year PTO Issue of Patent</u></p> <p>PTO must issue a patent within 3 years (not including exclusions) after the date on which the application was filed under 35 USC 111(a) or the national stage commenced under <u>35 USC 371(b)</u> or (f) in an International application. Period of adjustment (credits) begins on the day after the date that is 3 years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under <u>35 USC 371(b)</u> or (f) in an International application and ending on the date a patent was issued, but not including the sum of the listed exclusionary periods. <u>35 USC 154(b)(1)(B)</u>; <u>37 CFR 1.702(b)</u>, <u>1.703(b)</u>.</p> <p>You have elected to analyze this rule under the PTO Exclusion Interpretation, but this election did not affect the number of credit days under this rule.</p>	<p><i>Issue Date:</i></p> <p>01/10/2006 Issue Date</p>	0	0
		<p><u>3-Month Applicant Response to Notice or Action</u></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3</p>			

C	06/28/2002 Restriction / Election-of- Species	<p>months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. <u>35 USC 154 (b)(2)(C)(II); 37 CFR 1.704(b).</u></p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. <u>35 USC 154(b)(3)(C); 37 CFR 1.705(c).</u></p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<i>Applicant Response:</i>	07/15/2002 Response to Election-of- Species / Restriction Filed	0	0
D	07/15/2002 Response to Election-of- Species / Restriction Filed	<p><u>4-Month PTO Response to Applicant Reply</u></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. <u>35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).</u></p>	<i>PTO Response:</i>	10/22/2002 Non-final Action	0	0
E	10/22/2002 Non-final Action	<p><u>3-Month Applicant Response to Notice or Action</u></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this</p>	<i>Applicant Response:</i>	01/30/2003 Reply after	0	8

		<p>deadline. <u>35 USC 154 (b)(2)(C)(ii)</u>; <u>37 CFR 1.704(b)</u>.</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. <u>35 USC 154(b)(3)(C)</u>; <u>37 CFR 1.705(c)</u>.</p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	Non-final Action under 37 CFR 1.111		
F	01/30/2003 Reply after Non-final Action under 37 CFR 1.111	<p><u>4-Month PTO Response to Applicant Reply</u></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. <u>35 USC 154(b)(1)(A)(ii)</u>; <u>37 CFR 1.702(a)(2)</u>, <u>1.703(a)(2)</u>, (3).</p>	<p>PTO Response:</p> <p>04/08/2003 Non-final Action</p>	o	o
G	04/08/2003 Non-final Action	<p><u>3-Month Applicant Response to Notice or Action</u></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. <u>35 USC 154 (b)(2)(C)(ii)</u>; <u>37 CFR 1.704(b)</u>.</p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. <u>35 USC 154(b)(3)(C)</u>; <u>37 CFR 1.705(c)</u>.</p>	<p>Applicant Response:</p> <p>07/08/2003 Reply after Non-final Action under 37 CFR 1.111</p>	o	o

		You have indicated that no 1.705(c) Showing of Due Care was made.			
H	07/08/2003 Reply after Non-final Action under 37 CFR 1.111	<p><u>4-Month PTO Response to Applicant Reply</u></p> <p>PTO must respond to a reply under 35 USC 132 not later than 4 months after the date on which the reply was filed. The period of adjustment (credits) begins on the day after the date that is 4 months after the date a reply under 37 CFR 1.111 or in compliance with 37 CFR 1.113(c) was filed and ending on the mailing date of either an action under 35 USC 132, or a notice of allowance under 35 USC 151, whichever occurs first. <u>35 USC 154(b)(1)(A)(ii); 37 CFR 1.702(a)(2), 1.703(a)(2), (3).</u></p>	PTO Response: 09/23/2003 Notice of Allowance under 35 USC 151	0	0
I	09/23/2003 Notice of Allowance under 35 USC 151	<p><u>3-Month Applicant Response to Notice or Action</u></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. <u>35 USC 154 (b)(2)(C)(II); 37 CFR 1.704(b).</u></p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. <u>35 USC 154(b)(3)(C); 37 CFR 1.705(c).</u></p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	Applicant Response: 12/22/2003 Request for Continued Examination under 35 U.S.C. 132(b)	0	0
J	12/22/2003 Request for Continued	<p><u>Exclusion for Continued Examination</u></p> <p>3-Year PTO Issue Requirement does not include the period consumed by continued examination of the application under 35 USC 132(b), beginning on the date on</p>	Issue Date:	751	0

	Examination under 35 U.S.C. 132(b)	which a request for continued examination of the application under 35 USC 132(b) was filed and ending on the date the patent was issued. <u>35 USC 154(b)(1)(B)(i); 37 CFR 1.702(b)(1), 1.703(b)(1).</u>	01/10/2006 Issue Date		
K	01/28/2004 Notice of Allowance under 35 USC 151	<p><u>3-Month Applicant Response to Notice or Action</u></p> <p>Period of adjustment (credits) shall be reduced for the period in excess of 3 months taken to reply to any PTO notice or action making any rejection, objection, argument, or other request, beginning on the day after the date that is 3 months after the date of mailing or transmission of the Office communication and ending on the date the reply was filed. The period, or shortened statutory period, for reply set in the action or notice has no effect on this deadline. <u>35 USC 154 (b)(2)(C)(ii); 37 CFR 1.704(b).</u></p> <p>Where applicant shows, in spite of all due care, applicant was unable to respond within the 3-month period, all or part of adjustment may be reinstated for up to 3 additional months. <u>35 USC 154(b)(3)(C); 37 CFR 1.705(c).</u></p> <p>You have indicated that no 1.705(c) Showing of Due Care was made.</p>	<p><i>Applicant Response:</i></p> <p>05/03/2004 Issue Fee Payment under 35 USC 151</p>	0	5
L	04/15/2004 Amendment after Notice of Allowance under 37 CFR 1.312	<p><u>Amendment or Paper after Notice of Allowance</u></p> <p>Period of adjustment (credits) shall be reduced where applicant submits an amendment under 37 CFR 1.312 or other paper after a notice of allowance has been given or mailed, for the period beginning on the date the amendment or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment or such other paper; or (ii) 4 months, whichever is less. <u>37 CFR 1.704(c)(10).</u></p> <p>You have elected to analyze this rule under the PTO Interpretation. The other Interpretation produces a different number of debit days.</p>	<p><i>Notice of Allowance:</i></p> <p>01/28/2004 Notice of Allowance under 35 USC 151</p> <p><i>Office Action or Notice in Response:</i></p> <p>02/08/2005 Response to Amendment after Notice of Allowance</p>	0	120
		<u>4-Month PTO Issue of Patent</u>			

M	05/03/2004 Issue Fee Payment under 35 USC 151	PTO must issue a patent not later than 4 months after the date on which the issue fee was paid under 35 USC 151 and all outstanding requirements were satisfied. The period of adjustment (credits) begins on the day after the date that is 4 months after the date the issue fee was paid and all outstanding requirements were satisfied and ends on the day the patent issues. <u>35 USC 154(b)(1)(A)(iv)</u> ; <u>37 CFR 1.702(a)(4)</u> , <u>1.703(a)(6)</u> .	Issue Date: 01/10/2006 Issue Date	0	0
Total Exclusion, Debit, and Credit Days				751	133
Overlap Days				0	5
Net Exclusion, Debit, and Credit Days				751	128
Net Patent Term Adjustment Days					

(2) Assumes payment of all maintenance fees and no intervening acts. Terminal disclaimer(s) filed in this case, if any, may reduce the term. Without adjustment, the term would end on 11/06/2021.
 †Net credits were not limited by 37 CFR § 1.703(f) "Actual Delay" limitation. See calculation below.

37 CFR § 1.703(f) "ACTUAL DELAY" CALCULATION			
	Credit Days During Exclusionary Periods	Credit Days During Non-Exclusionary Period	
		Three-Year Issue Guarantee	All Other
Net Credit Days	494	0	0
Maximum Credit Days under 37 CFR § 1.703(f) "Actual Delay" Limitation			

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